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JOSE R. DE LA GARZA,)	DOCKET NUMBER
Appellant,)	DA07528910504
)	
v.)	
)	
UNITED STATES POSTAL SERVICE,)	DATE:
Agency.)	JUN 05 1990
)	
)	
)	

Roy Shirkey, Memphis, Tennessee, for the agency.

Daniel R. Levinson, Chairman
Maria L. Johnson, Vice Chairman
Jessica L. Parks, Member

This case is before the Board on the appellant's petition for review of an initial decision, issued by the Board's Dallas Regional Office on November 17, 1989, that sustained the agency's action demoting the appellant from his EAS-20 position of Manager of Customer Services, effective July 15, 1989. For the reasons discussed below, the appellant's petition is DISMISSED as untimely filed.

BACKGROUND

The initial decision noted that the decision would become final on December 22, 1989. See Initial Decision at 18. On December 29, 1989, the Board received a request from the appellant's representative for an extension of time for filing the petition for review. The request was postmarked December 22, 1989. See Petition for Review File, Tab 1. The Board granted the appellant a limited extension of time until January 16, 1990. See *id.*, Tab 2. The appellant's petition for review was dated and postmarked January 17, 1990, and was received by the Board on January 23, 1990. See *id.*, Tab 3. Because the petition appeared to be untimely, the Board issued an Order to the appellant on February 7, 1990, to show cause for the late filing. See *id.*, Tab 4.

The appellant replied to the show cause Order, claiming that good cause exists for a waiver of timeliness. See *id.*, Tab 5. The agency filed a response in opposition to the appellant's request for a waiver, arguing that the appellant failed to demonstrate good cause for a waiver. See *id.*, Tab 7.

ANALYSIS

The Board may extend the time limit for filing a petition for review where good cause is shown for the untimeliness. See *Shiflett v. United States Postal Service*, 839 F.2d 669, 670-74 (Fed. Cir. 1988). However, in the interest of judicial efficiency and fairness, regardless of how minimal the delay, the Board will not waive its timeliness requirements in the

absence of good cause. See *Stromfeld v. Department of Justice*, 25 M.S.P.R. 240, 241 (1984) (a petition for review filed one day late was not excused where the appellant offered no reasonable excuse for the delay).

In *Alonzo v. Department of the Air Force*, 4 M.S.P.R. 180, 184 (1980), the Board held that it would determine whether waiving a time limit for filing a petition with the Board was appropriate, provided that the party seeking a waiver show that he or she exercised diligence or ordinary prudence under the particular circumstance of the case.

In his affidavit requesting a waiver of the time limit, the appellant's representative states that he could not go to the Regional Office library to check citations on January 15, 1990, because the office was closed for a Federal holiday. He states that he checked the citations the next day, January 16, 1990. According to the representative, the petition for review was prepared on a word processor that had been purchased on January 3, 1990, and was being used for the first time. He states that, either through a malfunction in the word processor or the typist's unfamiliarity with the machine, the petition for review was inadvertently erased while corrections were being made and the 23-page document had to be retyped. The appellant's representative states that he mailed the completed petition for review the next day when he received it. See *id.*, Tab 5.

We find that the appellant has not shown good cause for the untimely filing of his petition for review. The record

shows that the appellant was on notice of the filing requirements. Although his representative filed his request for an extension of time on the last day for filing the petition, the Board granted him a limited extension of time. While he claims that the petition for review was late because it had to be retyped after it was lost in the word processor, nevertheless, the representative again waited until the last day to complete his petition for review. Thus, he had two months, from November 17, 1989, the date of the initial decision, until January 16, 1990, the date of the extended filing time, to prepare and file his petition for review. That he chose to wait until the afternoon of the last day for filing to complete work on the petition does not demonstrate due diligence. See *Gill v. Department of the Treasury*, 41 M.S.P.R. 267, 269-70 (1989) (an agency failed to demonstrate good cause for a one-day delay in filing a petition for review, which was hand-delivered to the Board after mail was inadvertently left in the agency's mailroom overnight; the agency waited until the afternoon of the last day to mail its petition, even though it could have completed and submitted it earlier).

Moreover, although he states that the petition was lost and had to be retyped on January 16, 1990, the last day for filing, the appellant's representative does not claim, nor does the record show, that he notified the Board of the problem encountered with the word processor or that he sought a further extension until he replied to the Board's show cause

Order. Under the circumstances, we find that he failed to act with reasonable prudence and that a further extension of time is not warranted. See *id.*

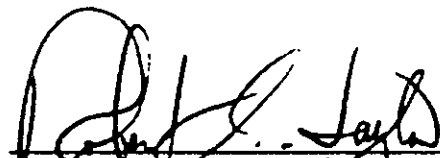
NOTICE TO APPELLANT

You have the right to request the United States Court of Appeals for the Federal Circuit to review the Board's final decision in your appeal if the court has jurisdiction. See 5 U.S.C. § 7703(a)(1). You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. See 5 U.S.C. § 7703(b)(1).

FOR THE BOARD:



Robert E. Taylor
Clerk of the Board

Washington, D.C.